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LAW OFFICES OF
ANDREW L. PACKARD

100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952
PHONE (707) 763-7227 FAX (707) 763-9227
INFO@PACKARDLAWOFFICES.COM

DEPT. OF JUSTICE - ENR
ENVIRONMENT DIVISION

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May 13, 2015

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Dustin L. Davis, Facility Engineer
Carlos Leon, Manager of Equipment
TransitAmerica Services, Inc.
585 Lenzen Avenue
San Jose, CA 95110

CT Corporation System
Agent for Service of Process
TransitAmerica Services, Inc.
818 West Seventh Street, 2nd Floor
Los Angeles, CA 90017

Dustin L. Davis, Facility Engineer
Carlos Leon, Manager of Equipment
TransitAmerica Services, Inc.
7150 Monterey Road
Gilroy, CA 95020

Stephen Chao,
Deputy Director of Engineering SamTrans
Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070-1306

Dustin L. Davis, Facility Engineer
Carlos Leon, Manager of Equipment
TransitAmerica Services, Inc.
65 Cahill Street
San Jose, CA 95110

Stephen Chao,
Deputy Director of Engineering SamTrans
Peninsula Corridor Joint Powers Board
P.O. Box 3006
San Carlos, CA 94070-1306

**Re: Notice of Violation and Intent to File Suit
Under the Federal Water Pollution Control Act**

Dear Mr. Davis, Mr. Leon and Mr. Chao:

This firm represents the Ecological Rights Foundation ("ERF") in regard to violations of the Clean Water Act ("the Act") occurring at TransitAmerica Services, Inc.'s ("TransitAmerica") railcar maintenance facility located at 7150/7250 Monterey Road, in Gilroy, California ("the Facility"). The parcel numbers for the Facility are as follows: 84113017, 84113023 and 84113022. The WDID number for the Facility is 3 43I016608. ERF is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including Llagas Creek, the Pajaro River and the Monterey Bay. This letter is being sent to you as the responsible owners, officers or operators of the Facility. Unless otherwise noted, Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. shall hereinafter be collectively referred to as "TransitAmerica."

This letter addresses TransitAmerica's unlawful discharges of pollutants from the Facility into the city of Gilroy's Municipal Separate Storm Sewer System, which conveys that water into Llagas Creek, which flows into the Pajaro River, and ultimately Monterey Bay. TransitAmerica is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 92-12-DWQ, and Order No. 97-03-DWQ ("Permit").¹ Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. are hereby placed on formal notice by ERF that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, ERF intends to file suit in federal court against Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)) for violations of the Clean Water Act and the Permit. These violations are described more fully below.

I. Background.

A. The Clean Water Act.

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutant by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The Permit requirement extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.30(a).

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand

¹ On April 1, 2014, the State Board reissued the Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current Permit remains in full force and effect.

discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). “Navigable waters” means “the waters of the United States” and includes, for example, traditionally navigable waters and tributaries to such waters. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2(c) and (e). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *U.S. v. Moses*, 496 F.3d 984, 990-991 (9th Cir. Aug. 3, 2007), *rehearing en banc denied* (2007).

ERF is informed and believes, and thereupon alleges, that TransitAmerica has discharged, and continues to discharge, pollutants from the Facility to waters of the United States, through point sources, in violation of the terms of the Permit, every day that there has been or will be any measurable discharge of storm water from the Facility since June 18, 2001 or earlier.² Each discharge, on each separate day, is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TransitAmerica is subject to penalties for violations of the Act since May 13, 2010.

B. TransitAmerica’s Facility, Water Quality Standards, and EPA Benchmarks

The Facility is located at 7150 Monterey Road in the City of Gilroy and discharges into the City of Gilroy’s Municipal Separate Storm Sewer System, which conveys that water into Llagas Creek, which flows into the Pajaro River, and ultimately Monterey Bay. The Facility falls under Standard Industrial Classification (SIC) Code 4111 (Passenger Rail Service). TransitAmerica submitted a Notice of Intent (NOI) to discharge under the General Permit on June 18, 2001. ERF’s investigations into the industrial activities at TransitAmerica’s approximately 4-acre Facility indicate that the Facility is used to store passenger and freight railcars, heavy machinery, waste oils, and scrap metals, including copper, steel and aluminum. Moreover, the Facility is used to service, fuel, wash, dismantle and maintain rail engine cars. TransitAmerica collects and discharges storm water from the Facility through at least six (6) discharge points into the city of Gilroy’s Municipal Separate Storm Sewer System, which conveys that water into Llagas Creek, which flows into the Pajaro River, and ultimately Monterey Bay. Llagas Creek, the Pajaro River and Monterey Bay are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board (“Regional Board”) has established water quality standards for the Pajaro River and the Monterey Bay in the “Water Quality Control Plan for the Central Coast Basin” (“Basin Plan”). The Basin Plan incorporates in its entirety the State Board’s “Water Quality Control Plan for Ocean Waters of California” (“Ocean Plan”). The Ocean Plan “sets forth limits or levels of water quality characteristics for

² Storm water is discharged in measurable amounts from the Facility on dates that include, but are not limited to, when 0.1 inches of rain falls on the Facility.

ocean waters to ensure the reasonable protection of beneficial uses and the prevention of nuisance. The discharge of waste shall not cause violation of these objectives.” Ocean Plan, at 4. The Ocean Plan limits the concentration of organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan establishes ocean water quality objectives, including that dissolved oxygen is not to be less than 7.0 mg/l and pH is between 7.0 - 8.5 s.u. Basin Plan, at III-2. It also establishes that toxic metal concentrations in marine habitats shall not exceed: Cu – 0.01 mg/L; Pb – 0.01 mg/L; Hg – 0.0001 mg/L; Ni – 0.002 mg/L; and, Zn – 0.02 mg/L. *Id.* at III-12.

The Basin Plan provides maximum contaminant levels (MCLs) for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: Aluminum – 1.0 mg/L; Arsenic - 0.05 mg/L; Lead - 0.05 mg/L; and Mercury - 0.002 mg/L. *Id.* at III-7.

The EPA has also issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for Aluminum - 0.05 mg/L to 0.2 mg/L, and for Zinc - 5.0 mg/L. *See* <http://www.epa.gov/safewater/mcl.html>. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: Aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); Chromium – 0.5 mg/L (primary); Copper – 1.0 mg/L (secondary); Iron – 0.3 mg/L; and Zinc – 5.0 mg/L. *See* California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule (“CTR”), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: Arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L; Chromium (III) – 0.550 mg/L (maximum concentration); Copper – 0.013 mg/L (maximum concentration); and Lead – 0.065 mg/L (maximum concentration).

The Regional Board has identified waters of the Central Coast, such as the Pajaro River, as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.³ Discharges of pollutants into a surface water body may be deemed a “contribution” to an exceedance of the CTR, an applicable water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the Permit was “subject to effluent limitations as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

³ *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml.

Under the Permit, benchmark levels established by the EPA (“EPA benchmarks”) serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).⁴ The following benchmarks have been established for pollutants discharged by TransitAmerica: Total Suspended Solids – 100 mg/L; Zinc – 0.117 mg/L; Copper – 0.0636 mg/L; and Lead – 0.0816 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for Specific Conductance of 200 µmhos/cm. Additional EPA benchmark levels have been established for other parameters that ERF believes are being discharged from the Facility, including but not limited to: Oil & Grease – 15.0 mg/L, Nickel – 1.417 mg/L, Magnesium – 0.0636 mg/L, Chemical Oxygen Demand – 120 mg/L, Cadmium – 0.0159 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L.

The Permit requires TransitAmerica to analyze storm water samples for Total Suspended Solids (TSS), pH, Specific Conductance (SC), and Total Organic Carbon (TOC) or Oil and Grease (O&G). Permit, Section B(5)(c)(i).

II. TransitAmerica’s Violations of the Permit.

Based on its review of available public documents, ERF is informed and believes that TransitAmerica is in ongoing violation of both the substantive and procedural requirements of the Clean Water Act, as discussed in detail below.

A. TransitAmerica Has Discharged Storm Water Containing Pollutants in Violation of Effluent Limitation B(3), Discharge Prohibition A(2), and Receiving Water Limitations C(1) and C(2).

The Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the Permit provides: “Except as allowed in Special Conditions (D.1.) of this Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.” Special Conditions D(1) of the Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water

⁴ The Benchmark Values can be found at: http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf, and <http://cwea.org/p3s/documents/multi-sectorrev.pdf>. (Last accessed on April 27, 2015).

discharge. Discharge Prohibition A(2) provides: "Storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

Receiving Water Limitation C(1) of the Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

TransitAmerica has discharged and continues to discharge storm water at unacceptable levels of Total Suspended Solids, Zinc, Copper, Lead, and Specific Conductance in violation of the Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. TransitAmerica's Annual Reports and Sampling and Analysis Results confirm discharges of specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Effluent Limitation B(3), Discharge Prohibition A(2) and/or Receiving Water Limitations C(1) and C(2) of the Permit:

1. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/16/2011	Storm Drain 1	TSS	280 mg/L	100 mg/L
2/16/2011	Storm Drain 4	TSS	160 mg/L	100 mg/L
3/18/2011	Storm Drain 1	TSS	870 mg/L	100 mg/L
2/16/2011	Storm Drain 3	TSS	670 mg/L	100 mg/L
2/29/2012	Storm Drain 2	TSS	110 mg/L	100 mg/L
3/20/2013	Storm Drain 1	TSS	843 mg/L	100 mg/L
3/20/2013	Storm Drain 2	TSS	506 mg/L	100 mg/L

3/20/2013	Storm Drain 3	TSS	463 mg/L	100 mg/L
2/6/2014	Storm Drain 2	TSS	110 mg/L	100 mg/L

2. Discharge of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/16/2011	Storm Drain 1	Zn	0.25 mg/L	0.117 mg/L
3/18/2011	Storm Drain 1	Zn	9.1 mg/L	0.117 mg/L
2/29/2011	Storm Drain 2	Zn	0.37 mg/L	0.117 mg/L
2/29/2012	Storm Drain 3	Zn	0.32 mg/L	0.117 mg/L
2/29/2012	Storm Drain 4	Zn	0.32 mg/L	0.117 mg/L
11/28/2012	Storm Drain 1	Zn	0.211 mg/L	0.117 mg/L
11/28/2012	Storm Drain 2	Zn	0.217 mg/L	0.117 mg/L
11/28/2012	Storm Drain 3	Zn	0.211 mg/L	0.117 mg/L
3/20/2012	Storm Drain 1	Zn	0.165 mg/L	0.117 mg/L
3/20/2012	Storm Drain 2	Zn	0.129 mg/L	0.117 mg/L
3/20/2012	Storm Drain 3	Zn	0.18 mg/L	0.117 mg/L

3. Discharge of Storm Water Containing Copper (Cu) at Concentrations in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
3/18/2011	Storm Drain 1	Cu	0.14 mg/L	0.0636 mg/L
3/20/2013	Storm Drain 1	Cu	0.0668 mg/L	0.0636 mg/L

4. Discharge of Storm Water Containing Lead (Pb) at Concentrations in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
3/18/2011	Storm Drain 1	Pb	0.19 mg/L	0.0816 mg/L

5. Discharge of Storm Water Containing Specific Conductance (SC) at Concentrations in Excess of Proposed Benchmark.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
3/20/2013	Storm Drain 1	SC	539 µmhos/cm	200 µmhos/cm
3/20/2013	Storm Drain 2	SC	573 µmhos/cm	200 µmhos/cm
3/20/2013	Storm Drain 3	SC	539 µmhos/cm	200 µmhos/cm

The above sample results demonstrate violations of Effluent Limitation B(3). ERF's investigations, including a review of TransitAmerica's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's Benchmark values and the State Board's proposed benchmark level for Specific Conductivity, indicates that TransitAmerica has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, Zinc, Copper, Lead, and Specific Conductance in violation of Effluent Limitation B(3) of the Permit. TransitAmerica was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, TransitAmerica is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

The above sample data demonstrates that TransitAmerica's discharges adversely impact human health or the environment in violation of Receiving Water Limitation C(1) of the Permit,

and that these discharges cause or threaten to cause pollution, contamination or nuisance in violation of Discharge Prohibition A(2). The above samples may also constitute violations of Receiving Water Limitation C(2) of the Permit, with respect to the discharge of parameters for which TransitAmerica has failed to undertake testing and which cause or contribute to an exceedance of applicable water quality standards, including CTR limits.

ERF is informed and believes that TransitAmerica has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least May 13, 2010. ERF alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since May 13, 2010, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which ERF alleges that TransitAmerica has discharged storm water containing impermissible levels of Total Suspended Solids, Zinc, Copper, Lead, and Specific Conductance in violation Effluent Limitation B(3), Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the Permit and the Act. Each violation in excess of receiving water limitations and discharge prohibitions is likewise a separate and distinct violation of the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TransitAmerica is subject to penalties for violations of the Permit and the Act since May 13, 2010.

B. TransitAmerica Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. Permit, Section A(8). ERF's investigations, and the Facility's exceedances of EPA benchmarks explained above, indicate that TransitAmerica has not implemented BAT and BCT at the Facility for its discharges of Total Suspended Solids, Zinc, Copper, Lead, Specific Conductance and other unmonitored pollutants in violation of Effluent Limitation B(3) of the Permit.

To meet the BAT/BCT requirement of the Permit, TransitAmerica must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, ERF believes that at a minimum TransitAmerica must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. TransitAmerica has failed to adequately implement such measures.

TransitAmerica was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, TransitAmerica has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. TransitAmerica is subject to penalties for violations of the Permit and the Act occurring since May 13, 2010.

C. TransitAmerica Has Failed to Implement an Adequate Monitoring & Reporting Program.

Section B of the Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Program by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the Permit requires that dischargers “shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled.” Section B(5)(c)(i) further requires that the samples shall be analyzed for Total Suspended Solids, pH, Specific Conductance, and Total Organic Carbon. Oil and Grease may be substituted for Total Organic Carbon. Section B(5)(c)(ii) of the Permit further requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” Section B(10) of the Permit provides that “Facility operators shall explain how the Facility’s monitoring program will satisfy the monitoring program objectives of [Permit] Section B.2.”

Based on their investigations, ERF is informed and believes that TransitAmerica has failed to develop and implement an adequate Monitoring & Reporting Program.

As an initial matter, based on its review of publicly available documents, ERF is informed and believes that TransitAmerica has failed to collect storm water samples during at least two qualifying storms events, as defined by the Permit, during at least three of the past five Wet Seasons (2010-2011, 2012-2013, 2013-2014). Second, based on its review of publicly available documents, ERF is informed and believes that TransitAmerica has failed to employ adequate testing methods and detection limits in violation of the Permit for the past five wet seasons. Further, TransitAmerica has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the Permit during at least three of the past five Wet Seasons. Finally, based on its review of publicly available documents, ERF is informed and believes that TransitAmerica has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including: Oil & Grease – 15.0 mg/L, Nickel – 1.417 mg/L, Magnesium – 0.0636 mg/L, Chemical Oxygen Demand – 120 mg/L, Cadmium – 0.0159 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L.

Each of these failures constitutes a separate and ongoing violation of the Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions

brought pursuant to the Clean Water Act, TransitAmerica is subject to penalties for violations of the Permit and the Act since May 13, 2010. These violations are set forth in greater detail below.

1. TransitAmerica Has Failed to Collect Qualifying Storm Water Samples During at Least Two Rain Events During Three of The Last Five Wet Seasons.

Based on its review of publicly available documents, ERF is informed and believes that TransitAmerica has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during three of the past five Wet Seasons, as required by the Permit. This is so, even though there were many qualifying storm events from which to sample (discussed further below).

TransitAmerica reported in four of the past five Wet Seasons (i.e., 2010-2011; 2011-2012; 2012-2013; 2013-2014 Wet Seasons), that the Facility sampled the first qualifying storm event of the season, when in fact it did not sample the first storm of the season during those four Wet Seasons. For example, TransitAmerica reported in its 2011-2012 Annual Report that it sampled the first qualifying storm event of the Wet Season, but TransitAmerica's first sample is from February 29, 2012. Based upon its review of publicly available rainfall data, ERF is informed and believes that the first qualifying storm event of the 2011-2012 Wet Season occurred as early as October 5, 2011, when 0.6" of rain fell on the Facility. These failures to adequately monitor storm water discharges constitutes separate and ongoing violations of the Permit and the Act.

2. TransitAmerica's Failure to Employ Adequate Testing Methods and Detection Limits in Violation of the Permit Since May 13, 2010.

TransitAmerica is in violation of the Permit's requirement that the detection limits used in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." Permit Section B(10)(a)(iii). In every single annual report filed by TransitAmerica, the detection limits employed by the laboratory utilized by TransitAmerica to analyze the concentration of the pollutants present in the storm water discharged from its Facility did not comply with these Permit requirements.

Specifically, the detection limits TransitAmerica applied over past four Wet Seasons have differed dramatically every year leading to inaccurate or unreliable sample results that failed to meet the standard set forth in Section B(10)(a)(iii). For example, the detection limit applied by TransitAmerica for Lead in 2010, 2011, 2012, 2013 and 2014 was 0.0023 mg/L, 0.005 mg/L, 0.1 mg/L, and 0.002 mg/L respectively. These are just a few of many examples of TransitAmerica's failure to adequately test the presence and concentration of pollutants at their storm water discharge points. TransitAmerica is in violation of the Permit for failing to employ laboratory test methods that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and

Receiving Water Limitations specified in this Permit.” Permit, Section B(2)(a) (“Monitoring Program Objectives”).

ERF is informed and believes that publicly available documents demonstrate TransitAmerica’s consistent and ongoing failure to implement an adequate Monitoring and Reporting Program in violation of Section B of the Permit. Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TransitAmerica is subject to penalties for these violations of the Permit and the Act since May 13, 2010.

3. TransitAmerica Has Failed to Conduct Monthly Wet Season Observations of Storm Water Discharges As Required by the Permit.

The Permit requires dischargers to “visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30).” Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in TransitAmerica’s Annual Reports for three of the last five Wet Seasons, ERF is informed and believes that TransitAmerica has failed to comply with this requirement of the Permit.

Specifically, TransitAmerica failed to conduct monthly visual observations of discharges from qualifying storm events for all months during three of the past five Wet Seasons (i.e 2010-2011, 2011-2012, and 2012-2013) as required by the Permit. TransitAmerica either completely failed to document visual observations at all, or documented its visual observations of storm water that discharged during non-qualifying storm events during three of the past five Wet Seasons. However, based on publicly available rainfall data, ERF is informed and believes that there were many qualifying storm events during each of these Wet Seasons that TransitAmerica could have observed.

For example, TransitAmerica reported in its 2011-2012 Annual Report that, except for the months of February, March, and April it did not observe a discharge or there was no rain during the entire Wet Season. Based on its investigation of publicly available rainfall data, ERF is informed and believes that this could not be possible because there were numerous significant rainfall events during those months. *See Attachment A.* TransitAmerica’s failure to conduct this required monthly Wet Season visual monitoring extends back to at least May 13, 2010, and has caused and continues to cause multiple, separate and ongoing violations of the Permit and the Act.

4. TransitAmerica’s Failure to Analyze Storm Water Samples for All Required Constituents.

The Permit requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” Permit Section B(5)(c)(ii). ERF is informed and believes that TransitAmerica has violated the Permit by failing to analyze samples for pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility during four of the past five Wet

Seasons (i.e. 2009-2010, 2010-2011, 2011-2012, 2013-2014) including: Oil & Grease – 15.0 mg/L, Nickel – 1.417 mg/L, Magnesium – 0.0636 mg/L, Chemical Oxygen Demand – 120 mg/L, Cadmium – 0.0159 mg/L, Mercury – 0.0024 mg/L, Selenium – 0.2385 mg/L, and Silver – 0.0318 mg/L.

Each failure to sample for all required constituents is a separate and distinct violation of the Permit and Clean Water Act. Accordingly, TransitAmerica is subject to penalties for these violations of the Permit and the Act since May 13, 2010.

D. TransitAmerica Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (“SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) require dischargers who submitted an NOI pursuant to the Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the Facility and identify and implement site-specific best management practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges. Permit, Section A(2). The SWPPP must also include BMPs that achieve BAT and BCT. Effluent Limitation B(3).

The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (Permit, Section A(3)); a site map showing the Facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (Permit, Section A(4)); a list of significant materials handled and stored at the site (Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective. Permit, Section A(7), (8). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary. Permit, Section A(9),(10). Receiving Water Limitation C(3) of the Permit requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce

the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

ERF's investigations and reviews of publicly available documents regarding conditions at the Facility indicate that TransitAmerica has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. TransitAmerica has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, TransitAmerica has been in continuous violation of Section A(1) and Provision E(2) of the Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. TransitAmerica is subject to penalties for violations of the Permit and the Act occurring since May 13, 2010.

E. TransitAmerica Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP.

The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, TransitAmerica is discharging elevated levels of Total Suspended Solids, Zinc, Copper, Lead, Specific Conductance, and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, TransitAmerica was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on ERF's review of available documents, TransitAmerica was aware of high levels of these pollutants long before May 13, 2010. TransitAmerica has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the Permit every day since May 13, 2010, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. TransitAmerica is subject to penalties for violations of the Permit and the Act occurring since May 13, 2010.

F. TransitAmerica Has Failed to File Timely, True and Correct Reports.

Section B(14) of the Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. Permit, Sections B(14), C(9), (10). Section A(9)(d) of the Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the Permit. *See also* Permit, Sections C(9) and (10) and B(14).

ERF's investigations indicate that TransitAmerica has submitted incomplete Annual Reports and purported to comply with the Permit despite significant noncompliance at the Facility. For example, TransitAmerica reported in four Annual Reports filed for the past four Wet Seasons (i.e., 2010-2011, 2011-2012, 2012-2013 and 2013-2014) that it observed storm water discharges occurring during the first storm of those Wet Seasons. However, as discussed above, based on ERF's review of publicly available rainfall data, ERF believes this is incorrect.

Further, TransitAmerica failed to sample from qualifying storm events in three of the last five Wet Seasons in violation of the Permit. For example, in the 2010-2011 Annual Report TransitAmerica reported that it sampled from a storm event on February 16, 2011. However based on publicly available rainfall data ERF, is informed and believes that it the storm that occurred at the Facility on February 16, 2011 was not a qualifying storm event because 0.23 inches of rain fell on the Facility on February 14, 2011. Thus, the February 14th storm event very likely rendered any storm occurring for three days afterwards non-qualifying under the Permit. These are but a few examples of how TransitAmerica has failed to file completely true and accurate reports. As indicated above, TransitAmerica has failed to comply with the Permit and the Act consistently for the past five years; therefore, TransitAmerica violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time TransitAmerica submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past five years. ERF hereby notifies TransitAmerica that it intends to sue regarding all such violations. TransitAmerica's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. TransitAmerica is subject to penalties for violations of Section (C) of the Permit and the Act occurring since May 13, 2010.

IV. Persons Responsible for the Violations.

ERF puts Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, ERF puts Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. on formal notice that it intends to include those persons in this action.

V. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows:

Notice of Violation and Intent To File Suit
May 13, 2015
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Ecological Rights Foundation, James Lamport, Executive Director, 867 B Redwood Drive,
Garberville, California 95542.

VI. Counsel.

ERF has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard
Megan Truxillo
John J. Prager
LAW OFFICES OF ANDREW L. PACKARD
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Email: Andrew@PackardLawOffices.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, ERF will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

ERF believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Dustin L. Davis, Carlos Leon, Stephen Chao, the Peninsula Corridor Joint Powers Board, and TransitAmerica Services, Inc. and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Andrew L. Packard
Counsel for
Ecological Rights Foundation

SERVICE LIST

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Eric Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

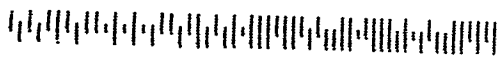
Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Kenneth A. Harris, Jr., Executive Officer
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

ATTACHMENT A
Notice of Intent to File Suit, TransitAmerica Services, Inc.
Significant Rain Events,* May 13, 2010 – May 13, 2015

May 25, 2010	March 23, 2011	April 12, 2012	February 8, 2014
May 27, 2010	March 24, 2011	April 13, 2012	February 9, 2014
October 17, 2010	March 25, 2011	April 15, 2012	February 26, 2014
October 22, 2010	March 26, 2011	October 22, 2012	February 27, 2014
October 23, 2010	April 8, 2011	October 23, 2012	February 28, 2014
October 24, 2010	May 15, 2011	November 16, 2012	March 1, 2014
November 19, 2010	May 16, 2011	November 17, 2012	March 3, 2014
November 20, 2010	May 17, 2011	November 18, 2012	March 26, 2014
November 21, 2010	May 18, 2011	November 28, 2012	March 29, 2014
November 23, 2010	June 4, 2011	November 29, 2012	March 31, 2014
November 27, 2010	June 28, 2011	November 30, 2012	April 1, 2014
December 5, 2010	October 5, 2011	December 2, 2012	April 4, 2014
December 14, 2010	November 4, 2011	December 3, 2012	April 25, 2014
December 17, 2010	November 5, 2011	December 5, 2012	September 25, 2014
December 18, 2010	November 11, 2011	December 15, 2012	October 25, 2014
December 19, 2010	November 18, 2011	December 17, 2012	October 31, 2014
December 21, 2010	November 19, 2011	December 22, 2012	November 1, 2014
December 22, 2010	November 20, 2011	December 23, 2012	November 13, 2014
December 25, 2010	January 19, 2012	December 25, 2012	November 19, 2014
December 28, 2010	January 20, 2012	December 26, 2012	November 29, 2014
December 29, 2010	January 21, 2012	December 29, 2012	November 30, 2014
January 1, 2011	January 22, 2012	January 5, 2013	December 1, 2014
January 2, 2011	January 23, 2012	January 6, 2013	December 2, 2014
January 30, 2011	February 7, 2012	January 24, 2013	December 3, 2014
February 14, 2011	February 13, 2012	January 24, 2013	December 5, 2014
February 16, 2011	February 15, 2012	February 16, 2013	December 11, 2014
February 17, 2011	February 29, 2012	March 6, 2013	December 12, 2014
February 18, 2011	March 1, 2012	March 7, 2013	December 16, 2014
February 19, 2011	March 16, 2012	April 1, 2013	December 17, 2014
February 24, 2011	March 17, 2012	April 4, 2013	December 19, 2014
February 25, 2011	March 18, 2012	October 29, 2013	December 20, 2014
February 26, 2011	March 24, 2012	November 19, 2013	February 6, 2015
March 13, 2011	March 25, 2012	November 20, 2013	February 7, 2015
March 16, 2011	March 27, 2012	December 6, 2013	February 8, 2015
March 18, 2011	March 28, 2012	December 7, 2013	March 11, 2015
March 19, 2011	March 31, 2012	January 30, 2014	April 7, 2015
March 20, 2011	April 10, 2012	February 2, 2014	April 25, 2015
March 21, 2011	April 11, 2012	February 6, 2014	
		February 7, 2014	

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.



X-RAVED
MAY 20 2015
DOJ MAILROOM

LAW OFFICES OF
ANDREW L. PACKARD
100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952

Eric Holder
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

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